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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/770,739	02/03/2004	Weiling Peng	HARD1.007C1	1004
60148	7590	06/13/2006	EXAMINER	
GARDERE / JAMES HARDIE GARDERE WYNNE SEWELL, LLP 1601 ELM STREET SUITE 3000 DALLAS, TX 75201			THOMPSON, CAMIE S	
			ART UNIT	PAPER NUMBER
			1774	
DATE MAILED: 06/13/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/770,739	PENG ET AL.	
	Examiner	Art Unit	
	Camie S. Thompson	1774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on Amendment filed 3/31/06.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3 and 8-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 20-28 is/are allowed.
- 6) Claim(s) 1-3 and 9-19 is/are rejected.
- 7) Claim(s) 8 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

1. Applicant's amendment and accompanying remarks filed March 31, 2006 have been acknowledged.
2. Examiner acknowledges amended claim 20.
3. Examiner acknowledges newly added claims 27-28.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3 and 9-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Guyette, U.S. Patent Number 5,425,986.

Guyette discloses a high-pressure laminate structure that can be suitable for flooring (see column 1, lines 44-62). The Guyette reference discloses a laminate structure comprising a fiber cementboard as a core layer or substrate (11) having a top and bottom surface and at least one resin impregnated sheet (30) on at least one side of the substrate (see Figure 1). Additionally, the reference discloses an adhesive (20), which can be an isocyanate/urethane, epoxy or polyvinyl acetate that is between the substrate and the at least one resin impregnated sheet (see Figure 2 and column 6, lines 15-35). Column 4, lines 49-68 of the reference disclose that the resin used to impregnate the sheets include melamine-formaldehyde resin and phenol-formaldehyde resin as per the instant claims. Also, Figure 1 of the reference discloses that a resin-impregnated paper

(30 and 31) can be laminated to both sides of the substrate. Additionally in Figure 1, another resin impregnated (41) sheet can be laminated onto another resin-impregnated sheet (30) as per instant claim 12.

6. Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not provide for the recited building material, further including the elastomer having a glass transition temperature between about -90 and 50 °C.

7. Claims 20-28 are allowed. The prior art does not provide for the recited building material, further including the elastomeric film having a thickness of about 5 mil or less and has an elongation between 20% and 1200%, wherein the modulus of elasticity at 100% elongation of between about 10 and 10,000 psi, and wherein the elastomer has a glass transition temperature between about -90 and 50 °C.

Response to Arguments

8. Applicant's arguments filed March 31, 2006 have been fully considered but they are not persuasive. Applicant's declaration is acknowledged. Applicant argues that the Guyette reference does not expressly disclose a building material having a stress-relieving elastomer or elastomeric film. Also, applicant argues that the reference does not discuss a layer having elastomeric properties. Guyette discloses adhesive(s) (20, 21) between the substrate and the at least one resin impregnated sheet. Applicant's instant claim 13 recites that the elastomer is an adhesive. Guyette discloses that the adhesive can be an epoxy or isocyanate/urethane.

Applicant recites that the elastomer can be an epoxy or isocyanate/urethane (polyurethane). Isocyanate/urethane has a high elastic modulus and would provide sufficient stress relief. Also, applicant argues that the Guyette reference does not specify that the adhesive is elastomeric. The reference does disclose the use of adhesive based on isocyanate/urethane and epoxy as the adhesives. Guyette describes a broad range of epoxy and would thus include epoxies that have elastomeric properties. Also, Guyette discloses the use of polyvinyl acetate as an adhesive. Polyvinyl acetate is known to be resistant to weathering, as is the elastomer claimed by applicant. Applicant also argues that the reference contemplates the adhesives to be used as rigid adhesives and that the adhesives are intended to be subjected to heat and pressure. Guyette discloses that the entire assembly is subjected to heat and pressure until the entire assembly is consolidated into a unitary laminate structure. Guyette does not disclose that the adhesive itself is a rigid adhesive. Guyette discloses a broad range of adhesives (epoxy), which can include epoxies that are elastomeric. Applicant also argues that the Guyette reference does not inherently disclose the claimed invention. Instant claim 1 is a broad claim that has the same components as provided by the Guyette reference. Instant claims 1 and 2 provide for a broad range of epoxies, which would include reactive epoxies. Instant claims 1 and 2 do not provide any distinguishing properties of the elastomer. Guyette and the instant application have the same components. The purpose of the epoxy as recited in instant claim 1 does not provide any patentable weight to the claim. Applicant claims that the elastomer is used as a stress reliever between the cementitious substrate and at least one resin impregnated paper. Applicant is not claiming that the elastomer is acting as a stress reliever for the entire building material only between the cementitious substrate and the resin impregnated paper. Therefore, applicant's

argument regarding the adhesives of Guyette is inconsistent with what applicant is claiming. The rejection is maintained.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Camie S. Thompson whose telephone number is (571) 272-1530. The examiner can normally be reached on Monday through Friday from 7:30 am to 4:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena L Dye, can be reached at (571) 272-3186. The fax phone number for the Group is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



RENA DYE
SUPERVISORY PATENT EXAMINER
A.U. 1774 6/8/08